[Background](#)

[Implementation into domestic legislation](#)

[EU Tax Centre comment](#)

## EU Public Country-by-Country Reporting Implementation – where we are

### Public Country-by-Country Reporting – Disclosure requirements – Tax Transparency – Domestic transposition

The EU public Country-by-Country (CbyC) Reporting Directive (the Directive) entered into force on December 21, 2021 and introduced a timeline for the adoption of rules that will require multinational groups operating in the EU and that exceed certain size thresholds to publish certain information on their tax affairs.

EU Member States have until June 22, 2023 to transpose the Directive into domestic legislation. The rules will apply, at the latest, from the commencement date of the first financial year starting on or after June 22, 2024. Individual Member States can nevertheless opt for an early adoption of the rules.

This Special Edition EuroTaxFlash summarizes where Member States are in terms of implementing the new rules into their domestic legislation as at November 15, 2022.

## Background and a summary of the rules

Following a proposal put forward by the European Commission in April 2016 and lengthy negotiations among Member States, as well as between the Council of the EU and the European Parliament, Council Directive (EU) 2021/2101 was adopted on November 24, 2021.

### *Scope*

The new rules will apply to multinational groups with total consolidated revenues exceeding EUR 750 million for each of the last two consecutive financial years if the group's ultimate parent undertaking[1] is either:

[1] The undertaking which draws up the consolidated financial statements of the largest body of undertakings in the group (according to Article 48a (1) of the Directive).

- based in the EU, or
- based in a third-country and operates in the EU through a qualifying subsidiary or branch[2].

The disclosure obligation will also apply to EU entities that are not part of a group (i.e. standalone undertakings) that meet the size threshold. However, the rules do not apply to standalone undertakings or groups (including their branches) that are established or have their fixed place of business or permanent business activity in a single Member State.

### *Required disclosures*

In addition to the name of the ultimate parent undertaking (or the standalone undertaking), the financial year concerned, the currency used for the presentation of the report and, where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, the report on income tax information should include data on seven key areas:

- a brief description of activities,
- number of employees,
- net turnover (including related-party turnover),
- profit or loss before tax,
- tax accrued,
- tax paid,
- amount of accumulated earnings.

Note that one of the differences between the data set above and that required under existing CbyC Reporting requirements (i.e., CbyC reports modeled on the OECD's Action 13 Final Report or "non-public" CbyC reports) is that the former does not require information on stated capital and on tangible assets (other than cash and cash equivalents), which do have to be disclosed in CbyC reports submitted to tax authorities.

The information listed above must be separately reported for each EU Member State where the group is active and for each jurisdiction deemed "non-cooperative" by the EU (Annex I of the EU list of non-cooperative jurisdictions) or that has been on the EU's "grey" list for a minimum of two years (Annex II)[3]. Information concerning all other jurisdictions may be reported on an aggregated level – another difference compared to private CbyC Reporting, which requires data to be separately reported for each jurisdiction in which the group operates.

---

[2] A qualifying EU presence is defined in accordance with Article 3 of the Directive 2013/34/EU and includes:

- medium-sized or large subsidiaries that meet two of the following three conditions: a balance sheet greater than EUR 4 million, net turnover greater than EUR 8 million, or an average number of employees exceeding 50
- branches which exceed the turnover threshold above (i.e., EUR 8 million) for each of the last two consecutive financial years.

Member States are nevertheless allowed to increase the limits above, up to EUR 6,000,000 for the balance sheet total and EUR 12,000,000 for the net turnover. In addition, the thresholds are periodically updated to keep pace with inflation.

[3] Please refer to the EU list of non-cooperative jurisdictions (Annex I and II).

### *Publication*

In the case of groups where the ultimate parent company is based in the EU, the disclosure obligation lies with the EU parent. Reports must be filed in publicly accessible commercial registers in the relevant Member State as well as on applicable group websites (unless Member States opted for the publication exemption option described below).

For non-EU parented groups that operate in the EU through qualifying subsidiaries and branches, the main rule is that each of the EU subsidiaries or EU branches is required to disclose information for the in-scope group. EU subsidiaries and branches that do not have access to the required information at group level will need to ask the non-EU parent to provide the data required to enable them to meet their obligations in the EU. If the parent does not provide all the required information, the subsidiary or branch will be required to publish the report based on all the information it possesses and a statement indicating that its parent did not make the necessary information available. There is one exception to this rule, whereby the EU subsidiaries and branches of the non-EU headquartered group are exempt from their obligations if the non-EU parent has published the report on their website and has assigned one of the EU subsidiaries or branches to file the report with their national commercial registry.

Where website publication is required, the reports need to remain accessible for at least five years.

### *Implementation options*

Member States are left with a number of choices with respect to domestic implementation:

- introducing the so-called “safeguard clause”: Member States can choose to allow in-scope groups to defer the disclosure of commercially sensitive information for a maximum of five years – with the exception of data related to jurisdictions on the EU list of non-cooperative jurisdictions (Annexes I and II);

- website publication exemption: Member States may opt to exempt companies from publishing the report on their websites, if the report is already made publicly available to any third party located in the EU, free of charge, on the website of the commercial registry.

The Directive does not provide for priority rules when Member States make use of different options or expand the scope of the Directive by, for example, require additional data points. As it stands and absent specific implementation guidance from individual Member States, the choice for one jurisdiction to give the option of a deferral of publication of certain data does not bind other EU jurisdictions. In other words, non-EU groups would only be able to apply the safeguard clause if all the EU jurisdictions in which they have a qualifying presence offer this possibility.

Disclosing entities are allowed to provide an explanation for any material divergency between the amount of income taxes paid and accrued in the reporting year, taking into account the amounts related to the prior year.

Once the rules are implemented into domestic law subject to the timeline mentioned above, in-scope groups will have 12 months after the end of the balance sheet date of the relevant financial year to publish the report on income tax information. For example, for calendar year taxpayers, the first reporting year will be financial year 2025 and the report will be due by the end of December 2026.

Note, however, that the Directive only sets the deadlines for implementation but does not prevent Member States from adopting and applying the rules sooner than the deadline. We have therefore

attempted to summarize what steps Member States have already taken in terms of implementation, with the notable development in Romania, where the rules will be effective from January 1, 2023.

## Implementation into domestic legislation

Although EU Member States have until June 22, 2023 to implemented the Public CbyC Reporting Directive into domestic legislation, several jurisdictions have already published draft legislation or introduced the public disclosure rules.

### *Germany: draft legislation published and public consultation closed*

On September 30, 2022, a draft bill was published by the German government to transpose the EU Public Country-by-Country Reporting Directive into domestic law. Interested stakeholders had until October 31, 2022 to submit feedback on the proposed text.

Germany intends to apply the “safeguard clause”. The draft rules include a provision that would allow in scope groups to temporarily omit information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission. The Explanatory Memorandum provides guidance on what type of information can qualify as causing a “significant disadvantage”. As such, multinationals may only defer the disclosure of those items that would cause such a serious disadvantage. Moreover, it is necessary that the disadvantage occurs with an “overwhelming probability”.

Germany also intends to grant the exemption from website publication to in-scope multinationals provided that the public CbyC reports are made available free of charge on the website of the local commercial registry.

For more details, please contact KPMG in Germany (Gerrit Adrian).

### *Hungary: draft legislation published*

On October 18, 2022, a draft bill was submitted to the Hungarian Parliament to implement Public CbyC Reporting Directive into domestic law.

Based on the draft text, Hungary does not intend to use the “safeguard clause” and consequently in-scope groups would not be allowed to defer the disclosure of commercially sensitive information. The text also does not provide for the website publication exemption.

Hungary intends to require multinationals in scope to explain the reasons behind any significant differences between the income tax accrued and income tax paid (if such significant differences exist). Such an overall narrative is provided for under the Directive as an option allowed to disclosing entities, but may be introduced as a requirement under Hungarian law.

For more details, please contact KPMG in Hungary (Mihály Gódor and Tamás Kovács).

### *Ireland: public consultation closed – draft legislation not yet published*

On December 20, 2021, through the Department of Enterprise, Trade and Employment, the Irish government launched a public consultation to seek the views of stakeholders on the implementation of the Public CbyC Reporting Directive into Irish law. Feedback was sought on the options available in the Directive – the deferral of disclosure of commercially sensitive information and the option to exempt from website publication where the information is widely available through a relevant register – and on any other issues that might be relevant to the transposition of the Directive.

KPMG Ireland responded to the public consultation – please refer to this link to see the comments submitted. The consultation was closed on February 18, 2022. The Irish government has not released draft legislation and has not indicated the approach they might take in legislating for the options allowed by the Directive.

For more details, please contact KPMG in Ireland (Colm Rogers and Sonia O'Loughlin).

### *Netherlands – draft legislation published*

On July 5, 2022, the Dutch government published draft legislation to implement the Public CbyC Reporting Directive. Is it not clear whether the Netherlands intends to make use of the "safeguard clause". Also, companies would be required to publish the reports on their website, as the Netherlands does not intend to grant an exemption from publication where the reports are made available free of charge on the website of the local commercial registry.

For more details, please contact KPMG Meijburg (Robert Van der Jagt).

### *Romania: implemented – disclosure rules to apply from January 1, 2023*

On September 7, 2022, legislation to implement the Public CbyC Reporting Directive was published in the Romanian Official Gazette and will apply for financial years starting on or after January 1, 2023. The rules will apply to groups with a consolidated net turnover exceeding RON 3.7 billion (the equivalent of EUR 747.5 million computed based on the exchange rate applicable as at December 21, 2021), for two consecutive financial years.

Note that the text of the Romanian implementing bill is not a literal translation of the wording of the Directive and – with respect to the scope of the rules – can be interpreted as applying to qualifying Romanian subsidiaries of EU-headquartered groups (as well as non-EU parent groups, as per the Directive). Furthermore, there is currently no switch off clause for such time when the reporting obligation becomes applicable in the jurisdiction of the EU parent. These provisions remain to be clarified with the Romanian authorities.

Romania made use of the "safeguard clause" and therefore in-scope groups would be allowed to defer the disclosure of commercially sensitive information, for up to five years. Also, Romania opted to exempt companies from the requirement to publish the CbyC reports on their website, provided that they are made available free of charge on the website of the local commercial registry.

For more details, please contact KPMG in Romania (Ionut Mastacaneanu and Teodora Alecu).

### *Sweden: draft legislation published and public consultation (ended)*

On June 1, 2022, draft legislation to implement the Public CbyC Reporting Directive was published in Sweden. A public consultation where interested stakeholders were invited to submit comments closed on September 20. The Swedish Government is expected to review the feedback received, update the text, if needed, and continue the legislative process for adoption (i.e. submit the proposal for Constitutional review and then submit the final official proposal to the Parliament).

Sweden intends to make use of the "safeguard clause", by allowing deferrals in submitting certain information if there is a risk for considerable harm. However, multinationals would not benefit from the website publishing exemption, as the draft text does not grant this possibility.

For more details, please contact KPMG in Sweden (Karolina Viberg).

## EU Tax Centre comment

In-scope taxpayers – whether part of groups with an EU or non-EU parent, are advised to monitor closely when and how individual Member States decide to implement specific provisions of the Public CbyC Reporting Directive. As mentioned above, the Directive has several opt-in clauses which would lead to differences in the way the provisions are transposed into domestic law. Moreover, the disclosures in the directive represent a minimum standard, and – in theory – Member States could extend their scope. As an example, Hungary has already indicated the intention to require in-scope groups to provide clarifications on the differences between the income tax accrued and income tax paid, which is not prescribed as being mandatory by the Directive.

The potential early adoption of the rules by certain Member States brings an additional layer of complexity, as in-scope multinationals might be faced with public disclosure requirements sooner than expected. For example, based on the current wording of the Romanian bill implementing the Directive, multinationals with a qualifying Romanian presence would need to disclose their CbyC data up to two years earlier than the deadline provided for under the Directive.

Note also that jurisdictions outside the EU are also looking to introduce mandatory disclosures of CbyC information. Australia's federal budget – released on October 25, 2022, includes proposals for new public reporting of certain tax information by multinational enterprises beginning July 1, 2023. The rules are intended to apply to multinationals that qualify as "significant global entities" (SGE)[4] – for more details please refer to a KPMG's TaxNewsFlash or contact KPMG in Australia (Jenny Wong).

In June 2021, the United States House of Representatives passed the Disclosure of Tax Havens and Offshoring Act which, if signed into law, would generally require U.S. Securities and Exchange Commission (SEC) registrants to publicly disclose their OECD-style CbyC Reports. Although the legislation was approved by the House, it was not taken up by the Senate and at this time, seems

---

[4] Though not defined in the budget proposal, under Australia's current CbyC reporting rules, an "SGE" is global parent entity with an annual global income of AUD 1 billion or more, and any member of such a global parent entity's group.

unlikely to get signed into law in the immediate future. Nevertheless, the Act's passage in the House is reflective of a general shift towards more tax transparency.

Separately, in the coming months the Financial Accounting Standards Board (FASB) is expected to release draft rules that are similarly reflective of the growing trend towards more tax transparency. While these rules are unlikely to require the disclosure of information as extensive as the EU Directive, they are expected to recommend SEC registrants be required to provide more information on disaggregate tax reporting on a CbyC basis. For more details, please refer to KPMG's TaxNewsFlash.

Multinational groups should consider whether they fall within the scope of the EU public disclosure rules and determine if current internal reporting systems and processes are suitable for the collection of group-wide data reporting requirements. Even those Multinational groups that are not immediately in the crosshairs of EU public CbyC reporting should consider how they would respond to a request to publish CbyC data from tax authorities in other jurisdictions, investors, or other interested stakeholders.

KPMG Tax Impact Reporting can help your tax department use data driven methodologies to help accurately compile information on your CbyC reports and tax footprint, provide guidance for compliance and use leading technology solutions.

For more details on EU public country-by-country reporting as well as on how it relates to other, similar, initiatives, please refer to the KPMG's EU Tax Centre dedicated webpage.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

**Raluca Enache**
Associate Partner
KPMG's EU Tax Centre

**John DerOhanesian**
CbyC Reporting Global Coordinating Lead
Managing Director, KPMG in the U.S.

**Federica Porcari**
Manager, KPMG in the U.S.

**Ana Puscas**
Manager
KPMG's EU Tax Centre

kpmg.com/socialmedia

Privacy | Legal

You have received this message from KPMG's EU Tax Centre. If you wish to unsubscribe, please send an Email to eutax@kpmg.com.

If you have any questions, please send an email to eutax@kpmg.com

You have received this message from KPMG International Limited in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To unsubscribe from the Euro Tax Flash mailing list, please e-mail KPMG's EU Tax Centre mailbox (eutax@kpmg.com) with "Unsubscribe Euro Tax Flash" as the subject line. For non-KPMG parties – please indicate in the message field your name, company and country, as well as the name of your local KPMG contact.

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

© 2022 Copyright owned by one or more of the KPMG International entities. KPMG International entities provide no services to clients.  All rights reserved.

KPMG refers to the global organization or to one or more of the member firms of KPMG International Limited ("KPMG International"), each of which is a separate legal entity. KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. For more detail about our structure please visit home.kpmg/governance.